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DECLARATION
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UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF NEVADA

In re:)	Case No. BK-S-06-10725 LBR
USA COMMERCIAL MORTGAGE	)	Case No. BK-S-06-10726 LBR
COMPANY,	)	Case No. BK-S-06-10727 LBR
	)	Case No. BK-S-06-10728 LBR
Debtor	)	Case No. BK-S-06-10729 LBR
In re:	)	Chapter 11
USA CAPITAL REALTY ADVISORS, LLC.	)	Jointly Administered Under
	)	Case No. BK-S-06-10725 LBR
Debtor)	
In re:	)	Adversary No.
USA CAPITAL DIVERSIFIED TRUST)	
DEED FUND, LLC.	)	Date of Hearing:
	)	Time of Hearing:
Debtor)	
In re:	)	Affects:
USA CAPITAL FIRST TRUST)	<input checked="" type="checkbox"/> USA Commercial Mortgage Company
DEED FUND, LLC.)	<input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC
)	<input checked="" type="checkbox"/> USA Capital First Trust Deed Fund, LLC
Debtor)	<input type="checkbox"/> USA Securities, LLC
In re:)	<input type="checkbox"/> USA Realty Advisors, LLC
USA SECURITIES, LLC.)	<input type="checkbox"/> All Debtors
)	
Debtor)	
BINFORD MEDICAL DEVELOPERS,)	
LLC, an Indiana Limited Liability)	
Company,)	
Plaintiff,)	
vs.)	
USA COMMERCIAL MORTGAGE)	
COMPANY; et al.)	

DECLARATION OF KEN SCHMIDT
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION
TO COMPEL FIDELITY NATIONAL TITLE INSURANCE
COMPANY TO MAKE DISBURSEMENT FROM LOAN
FUNDS BEING HELD BY FIDELITY AS DISBURSEMENT AGENT

KEN SCHMIDT, under penalties of perjury, hereby declares on this 24th day of October, 2006:

1 1. I am the Managing Member of Binford Medical Developers, LLC ("Binford
2 Medical")

3 2. Debtor USA Commercial Mortgage Company ("Debtor" or "USACM") originated a
4 construction loan to Binford Medical Developers (the "Binford Medical Loan") in the principal
5 amount of \$8,375,000.00 on August 31, 2005. True and correct copies of the note, deed of trust and
6 construction loan agreement are attached hereto as Ex.s 1, 2 and 3 respectively.

7 3. The Binford Medical Loan is being used for the construction of a medical office
8 building in Indianapolis, Indiana (the "Medical Building Project"). This building is the first of five
9 medical office buildings planned for construction by Binford Medical.

10 4. In order to insure that the entire \$8,375,000.00 would be advanced, Binford and
11 USACM entered into a separate agreement whereby USACM committed to fund all amounts above
12 the initial disbursement of \$4,250,000.00 up to \$8,375,000.00 from its own funds. USACM also
13 committed to cause the Direct Lenders to forbear from exercising any rights or remedies during the
14 term of any default by USACM. A true and correct copy of that agreement, dated August 30, 2005,
15 is attached hereto as Exhibit 4 and incorporated by reference herein (the "USACM Agreement")

16 5. When the Binford Medical Loan was originated, an agreement was reached by
17 USACM and Binford Medical with Construction Disbursement Services of Fidelity National Title
18 Insurance Company ("Fidelity") for Fidelity to act as the disbursement agent for the construction
19 loan funds for the Binford Medical Loan.

20 6. Pursuant to this Court's Order in May, 2006, Fidelity has been regularly disbursing
21 the Binford Medical Loan proceeds pursuant to draw requests submitted to Fidelity by the contractor
22 on the Medical Building Project with the approval of Binford Medical and USACM.

23 7. Fidelity is currently holding approximately \$330,000.00 in loan proceeds from the
24 Binford Medical Loan. These funds were disbursed to Fidelity for the Binford loan prior to April
25 13, 2006 and interest is accruing on them.

26 8. In Binford's last draw request (draw #12), it sought the remaining balance in the account
27 of approximately \$540,000.00. Binford received only approximately \$209,000.00 despite the fact


1 that the general contractor and other contractors were due the full amount. This approximate
2 balance of \$330,000.00 is presently being held in the construction control account at Fidelity
3 National Title because USACM has demanded that it be disbursed to pay interest despite the fact
4 that USACM is in default under its obligations under the USACM Agreement. A copy of this draw
5 request is attached hereto as Exhibit "5". The interest reserve has been depleted through no fault of
6 Binford.

7 9. Under the terms of the USACM Agreement, the interest is not presently due and
8 payable because the balance of \$925,000.00 of the loan has not been funded.

9 10. Binford needs the \$330,000.00 to pay the \$445,000.00 currently due to the general
10 contractor. This amount was due by October 30, 2006. Binford paid the shortage from draw
11 number 12, the September payment due the general contractor, by means of short term financing at
12 very high interest rates. Without the \$330,000.00, the job will be liened, construction stopped and
13 Binford will be unable to obtain the financing to fill the gap that USACM is, apparently, unable to
14 fill.

15 11. The first building is now ninety (90) percent complete. An additional \$925,000.00
16 (including the \$445,000.00 currently due) is needed to complete the contract. If the Medical
17 Building Project is shut down or again delayed, Binford Medical faces the prospect of legal action
18 and resulting legal fees from the contractor and the subcontractors as well as from tenants who will
19 be delayed in being able to move into the Medical Building Project. Binford Medical's interest
20 charges will also increase if the Medical Building Project is shut down or delayed.

21 Respectfully submitted on October 24th, 2006.

22 
23 _____
24 Ken Schmidt

25 \\OFFICE\CLIENTS\Binford Medical Developers, LLC\DOCS\Affidavit of Ken Schmidt.wpd
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